

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JOHN W. CROMEANS, JR., individually	)	
and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MORGAN KEEGAN & COMPANY, INC.,	)	
	)	
Defendant/Third-Party Plaintiff,	)	No. 4:14-mc-00274-JAR
	)	
v.	)	
	)	
PELLEGRINO & ASSOCIATES, LLC,	)	
et al.,	)	
	)	
Third-Party Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on the Special Master's Statement of Fees (Doc. No. 45) and Exhibit A thereto. (Doc. No. 46)

By way of background, this miscellaneous discovery matter came before the Court on Defendant/Third-Party Plaintiff Morgan Keegan's motion to compel production from CVR. CVR withheld a number of documents from production based on attorney-client privilege and the work product doctrine. Given the volume of documents to be reviewed, and the parties' inability to resolve their issues regarding CVR's privilege logs, the Court appointed Michael W. Flynn of the firm Kilo and Flynn as Special Master to complete an *in camera* review of the approximately 700 documents identified in those privilege logs. The Special Master filed his Report recommending that Morgan Keegan's motion to compel be sustained in part and denied in part. He supplemented his report with a general statement of the law applied in reaching his conclusions

regarding the protected status of the documents listed on CVR's privilege logs. The Court subsequently adopted the Special Master's Report and Recommendation and ordered that Morgan Keegan's motion to compel be granted in part and denied in part.

According to the documentation provided to the Court, the Special Master has incurred \$30,415.00 in fees for services rendered through December 31, 2014 in connection with his appointment. The Court is in receipt of the parties' responses to the Special Master's Statement of Fees. (Doc. Nos. 48, 49) Neither CVR nor Morgan Keegan objects to the amount of the Special Master's Fees. Upon review, the Court finds the number of hours expended by the Special Master (86.90) and the hourly rate (\$350) to be fair and reasonable.

This Court previously ordered that the Special Master's fees and other costs be paid by Morgan Keegan subject to reallocation by the Court or by Judge Nanette Laughrey, the District Judge assigned the underlying case. (Doc. No. 26) CVR maintains that the Court's prior allocation of 100% of the Special Master's fees to Morgan Keegan should not change because Morgan Keegan never offered to limit or narrow the Special Master's scope of review to specific documents or time periods and because the Special Master agreed with essentially all of CVR's privilege assertions. Morgan Keegan argues that some or all of the costs of the Special Master's review should be apportioned to CVR given that its privilege log did in fact contain some non-privileged documents.

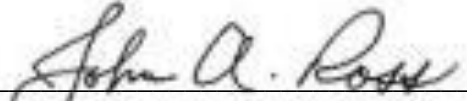
The apportionment of fees and costs for a special master rests within the Court's discretion. Southern Agency Co. v. LaSalle Cas. Co., 393 F.2d 907, 915 (8<sup>th</sup> Cir. 1968). Given the number of documents which CVR asserted were privileged and the number of documents determined to be non-privileged, the Court finds that some small percentage of the Special Master's fees should be allocated to CVR. Upon consideration, the Court finds that percentage to be 10%.

Accordingly,

**IT IS HEREBY ORDERED** that the Special Master's motion for attorney's fees [45] is **GRANTED** and Special Master Flynn is awarded \$30,415.00 in fees.

**IT IS FURTHER ORDERED** that Defendant/Third-Party Plaintiff Morgan Keegan & Company, Inc. shall be liable for Special Master Flynn's fees in the amount of \$27,373.50 and shall pay that amount to the Special Master within seven (7) days of the date of this Order.

**IT IS FURTHER ORDERED** that non-party witness Cunningham, Vogel & Rost, PC shall be liable for Special Master Flynn's fees in the amount of \$3,041.50 and shall pay that amount to the Special Master within seven (7) days of the date of this Order.

  
**JOHN A. ROSS**  
**UNITED STATES DISTRICT JUDGE**

Dated this 23<sup>rd</sup> day of January, 2015.